

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

2003 SEP -5 AM 11:13  
SC FILED  
COMPTROLLER

IN RE: )

Generic Proceeding to Define the Term )  
"Inflation-Based Index" )

Docket No. 2002-408-C

**BELLSOUTH TELECOMMUNICATIONS' INC.'S RESPONSE TO  
THE CONSUMER ADVOCATE'S PETITION FOR RECONSIDERATION  
AND/OR CLARIFICATION OF ORDER NO. 2003-466**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its Response to the Consumer Advocate's Petition for Reconsideration and/or Clarification of Order No. 2003-466. In that Petition, the Consumer Advocate notes that in a previous Order entered in another docket some seventeen months ago (Order No. 2002-207),<sup>1</sup> the Commission properly found that there is no public interest requirement in §58-9-576. *See* Petition at p. 2. The Consumer Advocate then asserts that "the Commission needs to clarify whether or not it is overruling its previous interpretation of §58-9-576 in Order No. 2002-207." *Id.* For the reasons set forth below, BellSouth requests that the Commission either deny this request for clarification or find that it is not overruling Order No. 2002-207 in any respect. BellSouth takes no position on the remainder of the Consumer Advocate's Petition, which affects Sprint more than it affects BellSouth.

Nothing in the Order that is the subject of the Consumer Advocate's Petition could be fairly read to suggest that it overrules Order No. 2002-207. No party questioned the validity of Order No. 2002-207 in this proceeding, no party asked the Commission to

<sup>1</sup> The Commission entered this Order in Docket No. 2001-423-C on March 20, 2002.

overrule Order No. 2002-207 in this proceeding, and nowhere does the Order the Commission entered in this proceeding purport to overrule Order No. 2002-207. BellSouth, therefore, respectfully submits that the clarification suggested by the Consumer Advocate is not necessary.

To the extent that the Consumer Advocate is requesting that the Commission overrule Order No. 2002-207, the Commission should summarily deny that request. As a party to the docket in which Order No. 2002-207 was issued, the Consumer Advocate had the opportunity to seek judicial review of that Order. Having chosen not to do so, the Consumer Advocate cannot attack that Order now, in a motion for reconsideration or clarification it has filed some seventeen months later in a totally separate docket.

Finally, under state law, an agency like the Commission cannot arbitrarily fail to follow its own established precedent. *See 330 Concord Street Neighborhood Ass'n v. Campsen*, 424 S.E.2d 538, 540 (S.C. Ct. App. 1992). As noted above, the validity of Order No. 2002-207 simply was not at issue in this proceeding. Thus, to the extent that the Consumer Advocate is requesting the Commission to enter an order of "clarification" or "reconsideration" that overturns a prior decision that simply was not an issue in this proceeding, the Consumer Advocate inappropriately is requesting the Commission to arbitrarily fail to follow its own established precedent. The Commission should deny any such request.

## CONCLUSION

For the reasons set forth above, BellSouth respectfully requests that the Commission deny the Consumer Advocate's request "to clarify whether or not it is

overruling its previous interpretation of §58-9-576 in Order No. 2002-207.” In the alternative, BellSouth requests that the Commission clarify that it is not overruling its previous interpretation of §58-9-576 in Order No. 2002-207.

Respectfully submitted,



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September 5, 2003

PC Docs # 503899

STATE OF SOUTH CAROLINA                 )  
  ) CERTIFICATE OF SERVICE  
COUNTY OF RICHLAND                         )

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Response to the Consumer Advocate's Petition for Reconsideration and/or Clarification of Order No. 2003-466 in Docket No. 2002-408-C to be served upon the following this September 5, 2003:

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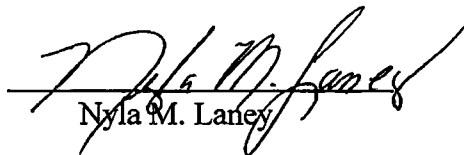
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